

REMARKS

Introduction

The present application includes claims 1-27, wherein claims 1, 11, and 21 are presented in independent form. Applicants acknowledge with appreciation the Examiner's indication that claims 5, 7-10, 15, 17-20, and 25 contain allowable subject matter. Reconsideration and reversal of the rejection of claims 1-4, 6, 11-14, 16, 21-24, and 26-27 presented in the Office Action dated July 27, 2004 is respectfully requested in light of the following arguments.

Information Disclosure Statement

Applicants respectfully note the Examiner did not provide an initialed copy of the PTO Form 1449 filed on February 19, 2004. Applicants respectfully request the Examiner to include an initialed copy of the Form 1449 with his next Official Action.

Claim Objections

Applicants thank the Examiner for his indication that claims 5, 7 to 10, 15, 17 to 20, and 25 were objected to as being upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections

Claims 1 to 4, 6, 11 to 14, 16, 21 to 24, 26, and 27 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,401,277 to Savage et al. (hereinafter "Savage").

Applicants respectfully submit that the Savage patent simply does not support the Examiner's rejection of claims 1 to 4, 6, 11 to 14, 16, 21 to 24, 26, and 27 under 35 U.S.C. § 102(e). The case law clearly states that "anticipation requires that a single prior art reference disclose every limitation of the patent claim." General Electric Co. v. Nintendo Co., 50 USPQ2d 1910, 1915 (Fed. Cir. 1999) (citing PPG Industries, Inc. v. Guardian Industries Corp., 37 USPQ2d 1618, 1624 (Fed. Cir. 1996)) ("to anticipate a claim, a reference must disclose every element of the challenged claims and enable one skilled in the art to make the anticipating subject matter."). More particularly, the Federal Circuit has held that the test for anticipation is "[t]hat which would literally infringe if later in time anticipates if

earlier than the date of invention.” Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 3 USPQ2d 1776 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

Savage describes a hospital bed 10 including a bedframe 12, a mattress 14, a pair of head end siderails 24, and a pair of foot end siderails 26. Head end and foot end siderails 24, 26 cooperate to define a gap 28. A pair of siderail extenders 30 is provided to fill gap 28. As shown in Fig. 26, “When in the storage position, leading edge 84 is positioned below upper surface 114 of foot end siderail 26 and away from upper surface 112 of head end siderail 24. This orientation permits siderail extender 30 to be positioned or stored in a storage position out of the way...when the siderail extender 30 is in the storage position, siderails 24, 26 are free to pivot between the raised and stored position without interference therebetween.” (Savage, Col. 8 ll. 11-20).

Claim 1

Savage fails to teach or suggest a combination including “the compliant member being configured to move relative to the rail member when the compliant member moves into contact with an object” as required by claim 1 (emphasis added). Extender 30 in Savage does not move relative to one of the siderails when it moves into contact with an object. The examiner argues that Extender 30 moves relative to the siderails. However, Savage teaches that extender 30 is positioned on siderails 24, 26 and remains in contact as the siderails move, as shown in Figs. 9-14. *See* Savage, col. 7, lines 52-57 (“Once positioned so as to bridge across gap 28...bridge 32 is capable of remaining in position as...head and foot end siderails 24, 26 are moved into different configurations.”) *See also* Savage, col. 9, line 66-col. 10, line 7 “[b]ridge 432 is positioned over head and foot end siderails 24, 26...thus when head and foot end siderails 24, 26 move relative to one another, leading edge 484 in continuously urged into contact with head end siderail 26.”) In other words, Savage’s extender 30 is always in contact with the siderails when it is in use.

Further, Savage teaches that extender 30 does not contact an object when it is moved into a storage position. *See* Savage, col. 8, lines 11-20 (“leading edge 84 is positioned below upper surface 114...and away from upper surface 112”). Similarly, Savage teaches that extender 30 is kept out of the way (i.e., does not contact an object) when either of the siderails 24, 26, are moved up or down. *See* Savage, col. 10, lines 13-42.

For at least these reasons, the Applicants respectfully request that the Examiner reconsider the “when it moves into contact” limitation required by claim 1.

Applicants believe that claim 1 is in condition for allowance with respect to Savage. Removal of the rejection and allowance of claim 1 is respectfully requested. If the Examiner

should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 2-4, and 6

Claims 2-4 and 6 depend from claim 1. In that claim 1 is believed to be allowable, claims 2-4 and 6 are also believed to be allowable. Removal of the rejections and allowance of claims 2-4 and 6 is respectfully requested.

Claim 11

For the reasons stated above, Savage fails to teach or suggest a combination including "the second rail member being spaced apart from an object when the siderail is in the first position, the second rail member contacting the object when in the second position, the second rail member moving relative to the first rail member when the second rail member moves into contact with the object" as required by claim 11 (emphasis added). The Examiner is respectfully requested to reconsider the "when it moves into contact" limitation required by claim 11.

Applicants believe that claim 11 is in condition for allowance with respect to Savage. Removal of the rejection and allowance of claim 11 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

Claims 12-14 and 16

Claims 12-14 and 16 depend from claim 11. In that claim 11 is believed to be allowable, claims 12-14 and 16 are also believed to be allowable. Removal of the rejections and allowance of claims 12-14 and 16 is respectfully requested.

Claim 21

Savage fails to teach or suggest a combination including "the second rail member being configured to move in the direction when the siderail moves in the direction until contacting an object and ceasing movement in the direction" (emphasis added). Savage does not disclose, teach or suggest, nor did the Examiner address the "ceasing movement" limitation. There is simply no support in Savage for this rejection. Applicants respectfully request the Examiner to reconsider the "ceasing movement" limitation of claim 21.

Applicants believe that claim 21 is in condition for allowance with respect to Savage. Removal of the rejection and allowance of claim 21 is respectfully requested. If the Examiner should disagree with the Applicants' arguments, the Examiner is asked to kindly point out with particularity where the limitation is expressly disclosed.

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Claims 22-24 and 26-27

Claims 22-24 and 26-27 depend from claim 21. In that claim 21 is believed to be allowable, claims 22-24 and 26-27 are also believed to be allowable. Removal of the rejections and allowance of claims 22-24 and 26-27 is respectfully requested.

Dependent Claims

To enable the Applicants to better respond to any potential remaining rejections, the Applicants respectfully request that the Examiner provide additional specificity for the rejection of the dependent claims. Without undue speculation or otherwise, the Applicants are unable to find support for the Examiner's rejection of at least claims 2-4,6,12-14,16, 22-24 and 26-27 in addition to the comments made above regarding the independent claims.

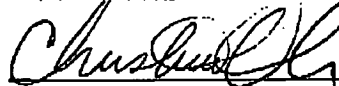
Final Remarks

In view of the foregoing amendments and remarks, Applicants submit that the application is now in condition for allowance. A Notice of Allowance is earnestly solicited.

If necessary, Applicants request that this Response be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP



Christine E. M. Orich
Reg. No. 44,987

Indianapolis, Indiana
(317) 684-5414

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